

NO. 21468 ✓

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT EDWARD GRAVENMIER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

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I

JURISDICTIONAL STATEMENT

On September 1, 1966, a one-count indictment was returned against appellant by the Federal Grand Jury for the Southern District of California, Central Division [C. T. 2]. ^{1/}

The indictment charged appellant with unlawful possession of a shotgun with a barrel of less than 8 inches which had been made in violation of the internal revenue laws of the United States [C. T. 2].

Appellant was convicted by a jury on September 8, 1966 [C. T. 16]. On September 30, 1966, appellant was sentenced to the

^{1/} "C. T. " refers to Clerk's Transcript.

custody of the Attorney General for four years with eligibility for parole at any time [C. T. 17].

The jurisdiction of the District Court was predicated on Title 18, United States Code, Section 3231 and Title 26, United States Code, Section 5851. This Court has jurisdiction under Title 28, United States Code, Sections 1291 and 1294.

II

STATUTES INVOLVED

Section 5821(a) of Title 26, United States Code, provides in pertinent part:

"(a) Rate. There shall be levied, collected, and paid upon the making in the United States of any firearm (whether by manufacture, putting together, alteration, any combination thereof, or otherwise) a tax at the rate of \$200 for each firearm so made."

Section 5851 of Title 26, United States Code, provides in pertinent part that:

"It shall be unlawful for any person to possess any firearm which . . . has at any time been made in violation of Section 5821. . . ."

The pertinent portion of Section 5848, Title 26, United States Code, provides:

"The term 'firearm' means a shotgun having a barrel . . . of less than 18 inches in length, . . . or any weapon made from a . . . shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches. . . . "

Section 5861 of Title 26, United States Code, provides in pertinent part:

" . . . Any person who violates or fails to comply with any of the requirements of this chapter shall, upon conviction, be fined not more than \$2,000, or be imprisoned for not more than 5 years, or both, in the discretion of the court. "

III

STATEMENT OF THE CASE

Appellant was indicted by the Federal Grand Jury for the Southern District of California, Central Division, for possessing a shotgun with a barrel cut to eight inches, in violation of Title 26, United States Code, Section 5851. The indictment charged that the appellant possessed the weapon on July 14, 1966 [C. T. 2].

Appellant filed a motion to suppress which was heard and denied on September 8, 1966 [C. T. 16].

Trial by jury was held on September 8, 1966, before the

Honorable Walter E. Craig, United States District Judge, at which time appellant was convicted [C. T. 16].

On September 30, 1966, appellant was sentenced to imprisonment for four years with the provision that he may be eligible for parole at any time [C. T. 18].

Appellant filed a timely notice of appeal and was granted permission to appeal in forma pauperis [C. T. 19, 23].

IV

STATEMENT OF FACTS

A. Evidence of Guilt.

On July 14, 1966, Albert J. Gastaldo, a Los Angeles Police Officer, went to the Victory Savings and Loan Association in North Hollywood, California, where he had a conversation with numerous employees [R. T. 51-52]. ^{2/} Following the conversation, Officer Gastaldo and his partner left the savings and loan association and arrested appellant [R. T. 53].

At the time appellant was arrested, he was carrying a flight bag [R. T. 56]. In the bag the officers found a loaded sawed-off shotgun, with an 8-inch barrel [R. T. 57, 74]. At the same time a note was taken from the defendant's shirt pocket [R. T. 60]. The note stated:

"I'm armed. give me all your bills. Be quiet

^{2/} "R. T. " refers to Reporter's Transcript.

and quick. If you give alarm, you're dead. Give me five minutes before you give alarm. I don't want to hurt anyone if I can help it, but I won't hesitate if I have to. I have a sawed-off shotgun covering you." [Exhibit 3, R. T. 109; emphasis supplied].

At the commencement of the trial, it was stipulated that the \$200 tax required by Section 5821 of Title 26, United States Code, was not paid [R. T. 50].

B. Facts of the Arrest.

On March 24, 1966, Officer Gastaldo personally investigated the robbery of the Victory Savings and Loan Association in North Hollywood [C. T. 12].

On July 14, 1966, he received a phone call from Victory's manager who stated that a man who strongly resembled the one who committed the earlier robbery had been watching the bank for three days [C. T. 11-12].

Officer Gastaldo proceeded to the Association and talked to the employees [C. T. 12]. The employees pointed out appellant who was across the street [C. T. 12]. Several employees stated that appellant strongly resembled the March robber [C. T. 12]. They further stated that he had been sitting on a bench across the street and walking up and down in front of the bank for the past three days [C. T. 12].

Moreover, since the end of April, 1965, Officer Gastaldo

had a wanted bulletin issued by the police with a composite drawing of an individual who had committed several robberies in the San Fernando Valley [C. T. 12; R. T. 24]. According to the Officer, appellant was a "dead ringer" for the person in the composite drawing [R. T. 24].

As Officer Gastaldo watched appellant he crossed the street, walked in front of the Association, looked inside, appeared to see the police officers talking to the manager and another man, and continued walking [C. T. 13].

Officer Gastaldo and his partner left the bank and arrested appellant [C. T. 13]. One of the Officers immediately searched appellant's person and found the note. He then searched the flight bag which appellant was carrying and discovered the sawed-off shotgun [C. T. 13].

V

QUESTION PRESENTED

Was appellant's arrest by Officers of the Los Angeles Police Department based upon probable cause?

VI

ARGUMENT

APPELLANT'S ARREST WAS BASED UPON PROBABLE CAUSE

The sole question raised by appellant in this appeal is the legality of his arrest on July 14, 1966, outside of the Victory Savings and Loan Association in North Hollywood. If the arrest was legal, the sawed-off shotgun and note seized incident thereto was properly admissible.

Agnello v. United States, 260 U.S. 20 (1925).

Prior to the arrest the officer possessed the knowledge that (1) the association had been robbed in March, 1966, (2) according to several employees, appellant strongly resembled the March robber, (3) appellant had been watching the association for three days and (4) he was a "dead ringer" for the robber pictured in the wanted bulletin.

In Brinegar v. United States, 338 U.S. 160, the Supreme Court defined probable cause as follows:

"Probable cause exists where the facts and circumstances within the officer's knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." 338 U.S. 160.

Appellant has argued that there was no showing that the Officer's information was reliable. Research has disclosed no case where it has been suggested or even argued that an officer acts unreasonably when he relies upon information provided by witnesses to and victims of a robbery which he investigated or upon a wanted poster provided by the police department.

VII

CONCLUSION

For the reason herein stated, the judgment should be affirmed.

Respectfully submitted,

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CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Arthur I. Berman

ARTHUR I. BERMAN
Assistant U. S. Attorney

